IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-06-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

O.S.A.NOs.228 OF 2000 & 315 OF 2002

O.S.A.NO.228 of 2000

Raj Video Vision, a registered
partnership firm represented by
its Partner, M. Raveendran
No.703, Anna Salai,
Chennai 600 002. .. Appellant/Plaintiff

Vs.

1. S.A. Rajkannu,
   Proprietor
   Sree Amman Creations,
   154, Anandan Street,
   North Usman Road,
   T. Nagar, Chennai 17.

2. Messrs SUN TV,
   represented by its Director,
   268/269, Anna Salai,
   Chennai 600 018. .. Respondents/ Defendants

O.S.A.NO.315 of 2002

Raj Video Vision, a registered
partnership firm represented by
its Partner, M. Raveendran
No.703, Anna Salai,
Chennai 600 002. .. Appellant/ 2nd defendant

Vs.

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1. SUN TV, Unit of Messrs Sumangali
   Publications Pvt. Ltd.
   rep. by its Manager (Programming)
   268/269, Anna Salai,
   Chennai 600 018.

2. S.A. Rajkannu,
   Proprietor
   Sree Amman Creations,
   154, Anandan Street,
   North Usman Road,
   T. Nagar, Chennai 17.

3. Jain Satellite Television,
   Office at No.4, Lady Desikachari Road,
   Madras 600 004. .. Respondents/Plaintiff & Defendants 1 & 3

Appeals filed under Clause 15 of the Letters Patent and Order XXXVI Rule 1 of the O.S. Rules against the common judgment and decree dated 15.2.2000 in C.S.No.803 of 1994 and Tr.C.S.No.279 of 1998.

For Appellant in both Appeals : Mr.R. Krishnasamy Senior Advocate for Mr.C. Ramesh

For Respondent-2 in OSA.228/2000 & R-1 in OSA.315/02 : Mr.N.S. Varadachari for Mr.Anil Kumar

Respondent-3 in OSA.315/02 : No Appearance

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COMMON JUDGMENT

P.K. MISRA, J

Both these appeals are directed against the common decision of the learned single Judge in C.S.No.803 of 1994 and Tr.C.S.No.279 of 1998.

2. C.S.No.803 of 1994 was filed by the present appellant against the present Respondents 1 & 2 for declaration that the plaintiff is the owner of the limited copyright, video-cum-television including satellite television, of the Tamil picture 'Mahanadhi' for the entire India for perpetual period and for permanent injunction

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against the defendants from interfering with such right by telecasting the said picture and for rendering accounts. Such suit was filed on 11.7.1994. Defendant No.2 in the aforesaid suit filed an independent suit in C.S.No.907 of 1994, subsequently transferred and numbered as Tr.C.S.No.279 of 1998, for declaration that it is the owner of the copyright in respect of Satellite Television broadcast relating to the pictures described in the plaint schedule wherein the picture 'Mahanadhi' was included as S.No.1 and also for permanent injunction against the defendants. In such suit, the present appellant was impleaded as Defendant No.2.

3. For convenience, the appellant, who is the plaintiff in C.S.No.803 of 1994 and Defendant No.2 in the Tr.C.S.No.279 of 1998, is described as the plaintiff, and the plaintiff in the connected case is described as the contesting defendant, and the Producer of the film 'Mahanadhi', who is the common Defendant No.1 in both the suits, is described as the Producer.

4. The case of the plaintiff is that there was an agreement dated 31.1.1994 between the plaintiff and the Producer in respect of Tamil picture 'Mahanadhi'. Under the said agreement, the Producer assigned the Video rights and the rights of performing the exhibition of the picture in any mode of Visual or acoustic presentation for commercial and non-commercial exploitation, for a consideration of Rs.1,00,000/- for the entire India. As per the case of the plaintiff, the rights assigned under such agreement included the broadcasting rights by means of a system for reproducing actual or recorded scene at a distance on a screen by radio transmission with appropriate sound and vision of distance object obtained or by means of latest digital technology or system. The Producer also assigned the right of exploitation of the said picture to general public in any media of visual or acoustic presentation and any cinematograph work produced by such process analogous to Cinematography. The right included the exploitation by means of a wire and wireless diffusion for communication to the public within the meaning of the Indian Copyright Act. It is his case that under Section 2(ff) of the Copyright Act, 1957 "communication to the public" means communication to the public in whatever manner, including communication through satellite, and the definition of "broadcast" includes television broadcast also. It is further asserted that the contesting defendant through its communication network had telecasted songs and clippings of the picture 'Mahanadhi' during the month of June, 1994, infringing the plaintiff's limited copyright, which necessitated filing of C.S.No.803 of 1994.

5. The Producer, who is the first defendant in both the suits, filed a written statement wherein he admitted the execution of the agreement dated 31.1.1994. However, in such written statement,

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the specific plea was that under the agreement there was assignment of video rights only and no other right was assigned to the plaintiff and other rights remained with the Producer. Subsequently, he had assigned the broadcasting right through satellite television in favour of the contesting defendant as per agreement dated 13.6.1994. It is contended that the right to telecast the picture through satellite was never assigned to the plaintiff.

6. The stand taken by the contesting defendant in the suit filed by the present appellant and the stand reflected in the suit filed by such contesting defendant being similar, it is only necessary to refer to the substance of the allegations made in the written statement of such contesting defendant. It has been contended in such written statement / plaint that the right to telecast through satellite had never been given to the plaintiff and it was given to such contesting defendant by agreement dated 13.6.1994, and therefore, such contesting defendant alone is entitled to telecast the picture through satellite television. It has been further stated that in the agreement between the Producer and the plaintiff there is no mention of the word "Satellite" and the agreement dated 31.1.1994 in favour of the plaintiff only indicated the assignment of video rights over the picture. Various clauses in the agreement between the Producer and the plaintiff have been referred to in such written statement to highlight the above position. As already indicated, the contents in the written statement and the latter suit filed by the contesting defendant are similar, it is not necessary to refer to those allegations again.

7. Both the suits were taken up together and the following issues were framed in C.S.No.803 of 1994 :-

"i) Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for ?

ii) Whether the alleged assignment of Satellite TV rights under the agreement dated 13-6-1994 by the first defendant to the second defendant is valid ?

iii) Whether the agreement dated 31-1-1994 by the first defendant to the plaintiff includes satellite TV rights in favour of the plaintiff ?

iv) To what other reliefs are the parties entitled to?

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8. In the connected suit, namely, Tr.C.S.No.279 of 1998, the following issues were framed :-

1. Whether the Plaintiff is the absolute owner of copyright of the picture 'Mahanadhi' in respect of Satellite TV broadcast ?

2. Whether the Plaintiff is entitled to the reliefs of declaration and permanent injunction as prayed for in the suit; and

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3. To what relief, if any, the plaintiff is entitled to ?

9. While discussing Issue Nos.1 and 3 in C.S.No.803 of 1994, the learned single Judge found that under the agreement dated 31.1.1994 the Producer had only assigned video rights to the plaintiff. In other words, the plaintiff had only the rights to exploit the picture through video cassettes and broadcast the same through Video Cassette Recorders or Video Cassette Players or even by cable through private television, but he had not acquired any right to telecast the same through any Satellite and the right of the plaintiff had been confined within the Indian territory. It has been observed by the trial court as follows :

> "14. ... Therefore, it is strange that the plaintiff has chosen to contend that the rights obtained by him includes the right to exploit or telecast the picture through satellite television. Admittedly broadcasting through satellite television can be done only by transmitting the picture by uplinking it with satellites which are stationed outside the Indian territory and in the case of SUN TV the satellite uplinking is done in Philipines. The plaintiff does not claim that he has overseas right in respect of the picture 'MAHANADHI'. But, the very telecast through satellite television is possible only if the picture is taken to Philipines and then broadcasted through satellite television. Therefore, what the plaintiff has acquired under Ex.A-1 agreement is only video right and he can only transfer the picture by getting sound and negatives ad recording them in cassettes and exhibiting or telecasting them through any modes. So, the plaintiff has acquired only the right to transfer the picture into cassettes and by playing the cassettes the picture can be exhibited either through Video Cassettes Recorder or Video Cassette Player. The agreement does not mention about the right to telecast the picture through television much less satellite television. There is no point in the plaintiff ref2erring us to the meaning or connotation of copyright found in the Copyright Act, 1957. The entire copyright vests with the first defendant/Producer and he has chosen to enter into agreements in respect of limited copyright and one such right given to the plaintiff is the right to exploit the picture 'MAHANADHI' through Video cassettes. Therefore, there is absolutely no meaning in the plaintiff contending that by virtue of Ex.A-1 he has obtained right to telecast the picture through satellite television."

On the basis of the aforesaid main finding, the suit of the plaintiff was dismissed and that of the contesting defendant was decreed.

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10. O.S.A.No.228 of 2000 is filed against the dismissal of the suit C.S.No.803 of 1994 and the other connected appeal is directed against the decision in Tr.C.S.No.279 of 1998, which has been filed by the contesting defendant.

11. Two agreements, execution of which has not been denied, form the basis for the entire dispute. It is therefore necessary to refer to the relevant portions of the agreements. First in point of time obviously was that of the plaintiff. In such agreement, the Producer has been described as the Lessor and the plaintiff has been described as the Lessee. Preamble portion of the agreement is to the following effect :-

> " WHEREAS the Lessees have approached the Lessors with a request for acquiring the exclusive rights of exhibition, exploitation and distribution of Indian Vide rights and for broadcasting rights by means of the system for reproducing actual or recorded scene at a distance on a screen by radio transmission and commercial and non-commercial exploitation for entire India and also for performing the exhibition of the said picture assigned under these presents in any mode of visual, or acoustic presentation including the exhibition of the said picture by means of a wireless diffusion and by wire for communication to the public within the meaning of the Indian Copyright Act for which the Lessors have agreed to grant to them the lease rights aforesaid."

12. Clauses 1,3,4 and 5 of the agreement being relevant, are extracted hereunder :-

> "1. The Lessors hereby agree and grant on Lease the Indian Video Lease Rights and the rights of performing the exhibition of the picture in any mode of visual or acoustic presentation for commercial and non-commercial exploitation, exhibition, distribution, preparing manufacturing Master U-matic Video cassettes, copies thereto, lending the cassettes, for a perpetual period of the picture mentioned below referred to as the Leased period in consideration of a total royalty amount as mentioned below against each film for the entire India mentioned hereunder herein after referred to as the leased territory :

Name of the Picture	Starcast	Music by	Director	Producer/Negative Right Holder
MAHANADHI	Kamalhassan Sukanya	Illayaraja	Santhana Bharathi	S.A. Raj Kannu

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3. The rights hereby assigned would also include the broadcasting rights by means of a system for reproducing actual or recorded scene at a distance on a screen by radio transmission with appropriate sound and vision of distance objects obtained or means of Latest Digital Technology or systems.

4. The Lessors hereby assign to the Lessees the right to perform the exhibition of the said picture for the general public in any media of visual or acoustics presentation, and also any cinematograph work produced by any process analogous to cinematography in future by means of scientific advancement.

5. The Lessors hereby agree and confirm that the exhibition of the picture would also include the exploitation by means of a wire and wireless diffusion for communication to the public within the meaning of the Indian Copyright Act."

13. The relevant clauses of the agreement between the Producer and the contesting defendant are quoted hereunder :-

" 2. 'The Assignment of copyright for the said film/s for Satellite Television Broadcast' means, the absolute assignment to the Assignees or their authorised persons, of the copyright for broadcasting the said film/s through satellite, cable, wire, wireless or through any other system or any other forms, means and modes other than through Doordarshan's terrestrial primary channel, without restriction of geographical area.

4. On the aforesaid representations and declarations and believing the same to be true the Assignee hereby accept the Assignment of the Satellite TV Broadcast of the said films.

7. The Assignees shall have full, complete and unrestricted right to alter, delete, or cut any portion or add any portion of other film/s or documentaries, advertisements or sound, in the said films either before or after or intervening including the right to make the Videograms, Discs, Cassettes, Tapes in respect of songs, dialogues, scenes, extracts and/or combinations thereof the said films. In short, the Assignees shall have unrestricted rights to use the said films or videograms, cassettes, discs, tapes for any purpose in any manner whatsoever for Satellite TV Broadcast purpose as specified in Clause No.2."

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14. Learned counsel appearing for the appellant has submitted that the agreement between the Producer and the plaintiff/appellant clearly envisages conferment of right on the appellant to broadcast the picture through Satellite television and the right is not confined to mere "video rights" as observed by the trial court. In support of such contention, he has placed reliance upon certain provisions contained in the Copyright Act, 1957.
Since both the agreements were executed in January / June 1994, the relevant provisions as contained in the Copyright Act, 1957, before such Act was amended by Act 38 of 1994 with effect from 10-5-1995, are being referred to hereafter.

As per Section 2(dd) "broadcast" means communication to the public-

(i) by means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire,

and includes a re-broadcast;

According to Section 2(ff) "communication to the public" means communication to the public in whatever manner, including communication through satellite.

As per Section 2(m) "infringing copy" means,-

(i) . . .

(ii) in relation to a cinematograph film; a copy of the film or a record embodying the recording in any part of the sound track associated with the film;

(iii) . . .

(iv) . . .

if such reproduction, copy or record, is made or imported in contravention of the provisions of this Act.

15. The trial court has referred to the preamble portion as well as the first clause of the agreement in favour of the plaintiff to come to a conclusion that only the right to exploit video lease rights had been conferred under such agreement. However, in our opinion, the trial court has not kept in view the contents of the entire agreement while coming to such a conclusion. Even in the preamble portion, it has been indicated that the lessee had requested for acquiring the exclusive rights of exhibition, exploitation and distribution of video rights and for broadcasting rights by means of the system for reproducing actual or recorded scene at a distance on a screen by radio transmission and also for performing the exhibition of the said picture in any mode of visual or acoustic presentation including the exhibition of the said picture by means of a wireless diffusion and by wire for communication to the public within the meaning of the Indian Copyright. Even under Clause-1, the lessor had

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granted on lease the Video Rights and the rights of performing the exhibition of the picture in any mode of visual or acoustic presentation for commercial and non-commercial exploitation. If at all there was any doubt about the wide import of the preamble as well as Clause-1, such doubt was clearly dispelled by specific inclusion of Clause No.3 as well as Clause No.5, particularly in Clause No.5 it was emphasised that the right included the exploitation by means of wire and wireless diffusion for communication to the public within the meaning of the Indian Copyright Act. Reference to the Indian Copyright in the preamble as well as in Clause-5 makes it clear about the intention of the parties. The relevant provisions of the Indian Copyright Act, which have been already extracted, clearly indicate that the right conferred on the plaintiff was not confined to exploitation through videos alone, but also exploitation by means of wireless diffusion for communication to the public.

16. As per clause 2(dd) "broadcast" means communication to the public by means of wireless diffusion and as per Section 2(ff) "communication to the public" means communication to the public in whatever manner, including communication through satellite. In the face of such clear meaning available under the Copyright Act, 1957 and in view of the clear recital in the agreement, there is hardly any scope for any dispute on this aspect. The obvious conclusion is that not only the right of exhibiting the picture through video had been given, but also the right to exhibit the picture through satellite had been given.

17. The trial court proceeded on the footing that at the time when the agreement was executed, exhibiting the picture through satellite was not in contemplation and at any rate such picture could be shown through satellite only through the help of some satellite transponder in Philipines and the right of the plaintiff was confined to Indian territory. In our opinion, the trial court seems to have ignored the effect of the latter recitals in the preamble portion as well as in clauses 1, 3 and 5 of the agreement. A fair reading of the agreement in whole indicates that distribution of Video rights had been conferred and also the rights in performing the exhibition of the picture by means of wireless diffusion for communication to the public within the meaning of the Indian Copyright Act had been given, which clearly envisages the right to show the picture through satellite. It may be that at that particular moment the plaintiff did not have arrangement to uplink the picture through satellite. However, the right itself was created in perpetuity and merely because the plaintiff had no necessary infrastructure or arrangement, the same cannot be a ground to take away the clear language in the agreement.

18. In the decision of the Supreme Court reported in 2003(2) CTC 282 (OIL & NATURAL GAS CORPORATION LTD., v. SAW PIPES LTD.), it was observed as follows :-

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> "40. It cannot be disputed that for construction of the contract, it is settled law that the intention of the parties is to be gathered from the words used in the agreement. If words are unambiguous and are used after full understanding of their meaning by experts, it would be difficult to gather their intention different from the language used in the agreement. If upon a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. (Re: Modi & Co. v. Union of India, 1968(2) SCR 565). Further, in construing a contract, the Court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the Court can do about it. (Re: Provash Chandra Dalui and another v. Biswanath Banerjee and another, 1989 Supp(1) SCC 487)."

19. Law is well settled that when a contract is reduced to writing, the terms of the contract are to be ascertained from the words used in the contract unless there is any blatant or patent ambiguity. In the present case, we find none. Once this conclusion is reached, it is obvious that execution of the subsequent agreement in favour of the contesting defendant was in violation of the limited copyright which had been created in favour of the plaintiff.

20. It appears that the trial court has apparently accepted the contention to the effect that there was no scope for conferring the right of showing the picture through satellite at that stage as the plaintiff did not have the necessary infrastructure. In our opinion, such assumption or conclusion cannot be accepted in view of the decision of the Supreme Court in (1993) 3 SCC 715 (LAXMI VIDEO THEATRES AND OTHERS v. STATE OF HARYANA AND OTHERS).

21. Learned counsel appearing for the contesting defendant has submitted that the right was confined only to Indian territory, and therefore, the plaintiff could not have acquired the right to exhibit the picture through satellite which had necessarily linked with the foreign territory. As already indicated, the right to exhibit the picture through video cassettes is confined to Indian territory. However, apart from the said right, the agreement clearly conferred the right to uplink the picture through satellite.

22. For the aforesaid reasons, we are unable to uphold the findings of the trial court, and therefore, the decision of the trial court is liable to be set aside. C.S.No.803 of 1994 is accordingly decreed and Tr.C.S.No.279 of 1998 filed by the contesting defendant, namely, M/s. Sun TV, so far as it relates to the picture 'Mahanadhi'

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(S.No.1 in the plaint schedule), is dismissed. Parties are directed to bear their own costs throughout. It is made clear that dismissal of the suit of the contesting defendant is only with respect to the Tamil picture 'Mahanadhi'.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+ 1 cc to Mr.C.Ramesh, Advocate SR No.26235

+ 1 cc to Mr.Y.Anil Kumar, Advocate SR No.26304

NG(CO)
SR/10.11.2005

COMMON JUDGMENT IN OSA.
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